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SUBJECT: Strengthening China's Anti-trafficking Legal Framework

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Summary

¶1. (SBU) Participants from the Chinese Government and key non-governmental agencies agreed at a recent symposium that China must improve its efforts to combat human trafficking. Attendees discussed in detail whether China's existing laws could be modified to address trafficking better. Despite some concerns that China not be seen as responding to foreign pressure, participants ultimately agreed that China should modify its criminal code and ratify the UN's hallmark anti-trafficking protocol (Palermo Protocol). End Summary.

What Constitutes Trafficking?

¶2. (SBU) On October 23-24 in Beijing, the Ministry of Foreign Affairs (MFA) hosted a symposium on China's anti-trafficking legal framework and its accession to the UN Convention on Transnational Organized Crime (UNTOC) Protocol to Prevent, Suppress and Punish Trafficking in Persons (Palermo Protocol). Participants included government officials from 36 agencies, experts, scholars, practitioners, non-governmental organization (NGO) and UN representatives from 18 organizations, diplomats, journalists and members of the UN Office on Drugs and Crime (UNODC) in Vienna.

¶3. (SBU) Because Chinese criminal law defines trafficking differently than the Palermo Protocol, China's biggest challenge is to determine how to apply the language of the Protocol to China's legal system, noted Xu Yu, Deputy Division Chief at the Ministry of Foreign Affairs Department of Treaty and Law. He admitted that some trafficking-related issues are "neglected" in the Chinese legal system, and that this needs to be remedied. Huang Taiyun, Deputy Director General at the Standing Committee of the National People's Congress (NPC) Legislative Affairs Commission Criminal Legislation Office disagreed. He claimed that China's legal system criminalizes a range of different behaviors related to trafficking, such as obstruction of rescue operations of trafficking victims, and that this makes Chinese law more effective than the Protocol.

¶4. (SBU) Martin Fowke of UNODC's Anti-Human Trafficking Unit explained that in ratifying the Palermo Protocol, states need to ensure that the concepts addressed in the Protocol exist within their legal systems. Specific terms and definitions do not need to be replicated word for word, he explained. Li Xiao, a judge at the Research Office of the Supreme People's Court (SPC), indicated that certain provisions of China's legal system could be revised and adjusted, if needed, to match the Protocol.

Can China Change?

¶5. (SBU) Xu seconded Judge Li's opinion, pointing out that, based on

views expressed during the symposium, it seems that China is ready to make the needed changes to its legal framework to meet the standards of the Protocol. He stressed that these changes would be made consistent with China's unique tradition and culture, resulting in the same if not better outcomes than those prescribed by international law.

¶6. (SBU) Professor Liang Shuying from the School of International Law at China University of Political Science and Law said that China needs to "fill the gaps" in its criminal law, and perhaps consider returning to legislation that was in place in 1979 that addressed all human trafficking, not just trafficking of women and children. She insisted that legislation specific to trafficking and trafficking-related activities needs to be drafted, and that it is not enough for perpetrators of these activities to simply be punished under administrative or civil law. It is important, she added, that they be punished under sufficiently stringent anti-trafficking criminal legislation, otherwise trafficking victims would be ill-served.

¶7. (SBU) China's legal definition of "minor" will have to be modified to comply with the Palermo Protocol. At present, China defines a minor as a person under 14 years of age. Adjusting China's definition under the criminal law will be difficult, noted NPC's Huang, due to harsh realities in China's rural areas where families are often forced to earn additional income through their children. However, SPC's Judge Li does not consider this obstacle insurmountable. Li pointed out that as a signatory to the International Labor Organization's (ILO) Convention on the Worst Forms of Child Labor, China adjusted its labor laws to recognize minors as being individuals under 18 years of age, and could do the same for its criminal laws.

¶8. (SBU) Fowke added that a decision to ratify the Protocol does not obligate a country to change its legal system, but rather to simply

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agree to review its legislation with the intent to adjust its laws and regulations in the future. He noted that although there is still some debate about the best way to handle the differences in Chinese and international law related to trafficking, there seems to be "political will" in China to move forward and adhere to the Palermo Protocol.

¶9. (SBU) Fowke stressed that the Protocol's main focus is to criminalize all forms of trafficking, to punish all actors involved in trafficking and trafficking-related activities, to protect all forms of trafficking victims and to ensure that punishments are sufficiently severe for trafficking-related crimes. He reiterated that specific terms are not necessarily needed in each country's legal framework in order to comply with the Protocol's provisions. Instead, the Protocol requires that legislation be drafted to combat and prohibit "conditions of work inconsistent with human dignity."

Is the Protocol Necessary?

¶10. (SBU) Huang mused that given China's unique legal structure, current anti-trafficking provisions within Chinese criminal law might be better suited to China's situation than the Palermo Protocol. Building on this, other delegates agreed that China's legal system covers many aspects included in the Protocol, and pointed out that the Protocol and Chinese law share the same basic principles and are therefore compatible. For example, Chen Shiqu, Director at the Ministry of Public Security (MPS) Criminal Investigation Department Office to Combat Human Trafficking, argued that a number of similarities exist between the Protocol and current Chinese criminal law, including common objectives of protecting victims, respecting and safeguarding human rights, cross-agency participation and international cooperation.

¶11. (SBU) MPS Criminal Investigation Department Office to Combat Human Trafficking Deputy Director Yin Jianzhong went one step further and said "to ratify the Protocol is imperative for China both in terms of the international aspects of the (trafficking) problem and Chinese international cooperation." He added that he

thought "there are no substantive conflicts" between Chinese law and international law regarding anti-trafficking measures.

¶12. (SBU) A representative from the All-China Women's Federation (ACWF) agreed, emphasizing that "China needs to bear its responsibilities by ratifying the Protocol," thereby helping to improve regional development. Judge Li emphasized to participants that she believes a ratification of the Protocol would be in China's interest and would not necessarily be viewed as a reaction to external pressure.

What's Next?

¶13. (SBU) In a closing discussion, Professor Liang noted that legal differences are "not an obstacle" to China's accession, and urged MFA to push forward with a timetable for ratification. In his closing remarks, MFA's Xu noted that most symposium participants agreed that ratification of the Protocol would enhance China's efforts to combat human trafficking and strengthen its anti-trafficking legal framework as well as its cooperation with the international community on combating cross-border trafficking. The symposium ended with a call to ratify the Protocol as soon as possible.

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